IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 820 OF 1999

1. Bhimsha Sambha Bandgar
2. Sidharam Bhimsah Bandgar
3. Khandappa Apparao Bandgar
4. Gangaram Sambha Bandgar
5. Hanmant Gangaram Bandgar
6. Appasha Sambha Bandgar. ....Appellants.
(Orig.Accd. Nos.1 to 6)

Versus

The State of Maharashtra ....Respondent.

Mr.A.P.Mundargi with Mr.Ganesh Gole and Mr.Rahul S. Kate, Advocates. for the appellants.

Mrs.U.V. Kejriwal, APP for the State.

CORAM: V.G. PALSHIKAR
AND
ANOOP V. MOHTA, JJ.

7th Oct., 2004.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of conviction and sentence passed by III Additional Sessions Judge, Solapur on 21.5.1999 in Sessions Case No.113 of 1998, the appellants-accused has preferred this appeal on the grounds mentioned in the memo of appeal.

2. With the assistance of learned counsel and the learned Assistant Public

Prosecutor we have scrutinized and reappreciated the evidence on the record on the basis of which the learned trial Judge came to the conclusion of conviction.

3. The prosecution case stated briefly is that on 8.3.1998 according to the prosecution the accused persons, six in number, assaulted one Shivappa Deokate when he was going towards the village along with Revansiddha Govindappa Birajdar and another. The assault resulted in the death of Shivappa Deokate and therefore the accused persons were prosecuted for the offence punishable under section 302 read with section 149 of Indian Penal Code along with certain other offences. The cause for such assault was previous enmity. The prosecution has examined as many as 14 witnesses to prove its case and on appreciation of the evidence of these people the learned trial Judge came to the conclusion that all the six accused persons are guilty of having a common object for murdering the victim Shivappa Deokate and therefore proceeded to convict them as aforesaid. It is this order of conviction which is assailed before us. Shri Mundargi, learned counsel appearing on behalf of the appellants-accused has contended that the eye witness account as given by P.W. 8 – Prabhat Bansode and P.W. 11 – Laxman Kharat is not liable to accepted because they are not trust worthy witnesses. The exact criticism made by the learned counsel to acceptance of the evidence of eye witnesses P.Ws. 8 and 11 stated briefly is that :

i) they had no business to be present at the scene of offence and they are therefore chance witnesses;

ii) from the deposition of these two witnesses it will be seen that they are

almost identical on several points;

iii) taking into consideration that there was delay in recording the testimony of these two witnesses by police the possibility of they being tutored to say what they have said cannot be overruled;

iv) there is no reason why their statement was not recorded for two days after the incident;

v) the witnesses have very close association with the victim and his party, the relationship is long stands and therefore their deposing at the instance or instigation of the complainant party cannot be overruled;

vi) there could have independent witnesses who are not examined.

The learned counsel also attacked the recoveries on the basis of which conviction is recorded by the learned trial Judge. According to him recoveries are not proved as P.W. 7 -Yalappa Mashale and P.W. 9 – Abdul Kadar who were panchas to the recovery have turned hostile. According to the learned counsel therefore the eye witnesses are not believable. The other circumstantial evidence is not adequate, recoveries are not properly proved and therefore the order of conviction is unsustainable in law. These submissions of the learned counsel for the appellants-accused were countered by the learned additional Public Prosecutor who pointed out that there is no chance for P.Ws 8 and 11 being present at the site merely because they have chosen to go on foot. They need not be disbelieved or branded as chance witnesses. They corroborate each other on all material particulars and there is therefore no question of the order being vitiated in any manner. According to the learned public prosecutor even if the recoveries are ignored

ocular testimony of these two witnesses duly corroborate each other and is therefore sufficient to maintain the judgment of conviction. We have to consider these rival contentions in the light of our reappreciation of evidence on record.

4. There are in all 14 witnesses. P.W. 1 – Ramchandra Akkalkote is the Revenue Inspector who drew the map of the spot. P.W. 2 – Babu Madane is the panch witness who proves the inquest panchnama. P.W. 3 – Mhalappa Tele and P.W. 4 – Ismail Shaikh are the witnesses to seizure of cycle belonging to the accused but the recovery of cycle is wholly in consequential and therefore their evidence need not be considered. P.W. 5 – Arvind Shinde is a translator from Kanada to Marathi and vice versa. He was examined as he was responsible for translating deposition of some witnesses. P.W. 6 – Revansiddha Birajdar, P.W. 7 – Yalappa Mashale and P.W. 9 – Abdul Kadar have turned hostile. P.W. 7 – Yalappa and P.W. 9 – Abdul Kadar were panchas to recoveries made at the instance of the accused. Since the statement that the recovery was made at the instance of the accused itself is not proved because of the hostility of the panch witnesses it is difficult to accept the recoveries as one of the circumstance to prove involvement of the accused persons. P.W. 10 – Shivappa is the doctor who conducted the post mortem and has proved that the death was homicidal. P.W. 12 – Dattatraya Pethkar is a police constable who took the muddemal to the Pune Forensic Laboratory. P.W. 13 – Sikandar Patel is the Police Head Constable who took the report of the complainant Revansiddha Birajdar and registered the crime No.10/1998. He has proved the entries made by him. His testimony is inconsequential. P.W. 14 – Madhukar Kadam is the Assistant Police Inspector who is the investigating officer and he has proved how the investigation was conducted by

him.

5. It will be seen therefore that except P.Ws 8 and 11 who are the eye witnesses rest of the evidence is of the crime as is mentioned above. We have to therefore assess the testimony of these two eye witnesses and decide whether it was adequate enough to warrant the order of conviction.

6. P.W. 8 – Prabhakar has deposed that on 8.3.1998 around 9.00 a.m. he went to the weekly bazar of Aurad. There he met one Laxman Kharat. They had their food together and proceeded towards the village Rajur. This witness gives a clear description as to what happened and how he saw the assault. He states that he was going along with Laxman Kharat by footpath (Pay Wat) and he saw Shivappa Deokate, Revansiddha Birajdar and Laxman Sagar going towards village Rajur about 35 feet ahead of them. He then describes the clothes Shivappa was wearing. He then noticed these persons whom he names as the accused persons assaulted Shivappa. He says that accused Bhimsha Bandgar gave an axe blow on the head of Shivappa but Shivappa tried to avoid the blow with his left hand. Therefore the accused Siddharam Bandgar gave an axe blow on the head of Shivappa because of which he fell on the ground. He then says :

> " Accused Khandappa assaulted Shivappa with stick. Hanumant, Appasha and Gangaram caught hold the hand and legs of Shivappa Deokate and they were dancing. When Shivappa was lying on the ground at that time Bhimsha Bandgar gave an axe blow on the neck of Shivappa Deokate."

He then states that the accused thereafter ran away. He went over to the victim and found him very seriously hurt and therefore went to the village and informed Radhakrishna Patil and some others present there about the assault by the accused. He has been extensively cross examined. To this very effect is the testimony of P.W. 11 who was the second eye witness. Both these eye witnesses corroborate each other on all material particulars. The criticism of acceptance of their testimony is according to us not acceptable. Merely because the reason for going to Rajur was far fetched as put by the accused, it cannot be said that they are tutored to say what they said in the witness box. The reason given by them is legitimate reason for which a person can go from one place to another. There is nothing in their testimony which suggests that they have been tutored to speak what they are speaking or were influenced to speak what they have told. Their narration appears to be natural. There is therefore no reason why their testimony should be rejected. It is true that they were associated with the party of Shivappa and consequently it is natural that they depose when they see an old associate being assaulted. It is pertinent to note however that the evidence of the doctor P.W. 10 who conducted the post mortem lends intrinsic and substantial corroboration to the testimony of these two witnesses. The witnesses describe how the assault took place and the doctor has deposed the injuries on the person of the victim and they correspond exactly to the manner in which the assault took place. This inherent corroboration of the oral testimony is sought to be attacked by the learned counsel on the ground that their statements were recorded two days late and therefore they had the knowledge as to the exact injuries as disclosed by the post mortem report. There is nothing on record to show that there was such a prior knowledge. It was

for the defence to establish such knowledge if they had any. In the absence of any evidence of deliberate falsehood being spoken by the witnesses and the fact that they were naturally present at the scene of offence when the assault took place is further corroborated by the fact that is deposed to by the doctor who describes the injuries on the person of the victim which correspond to the description of assault given by these eye witnesses. In our opinion, this independent corroboration in addition to P.Ws 8 and 11 corroborating each other is adequate enough and the learned trial Judge therefore committed no error in convicting the accused as aforesaid. We are in respectful agreement with the findings recorded by the learned trial Judge and we need not therefore elaborate further the reasons to maintain that findings. In the result, therefore appeal fails and is dismissed.